

**CITY OF ROCKVILLE PLANNING DIVISION  
STAFF REPORT**

June 20, 2002

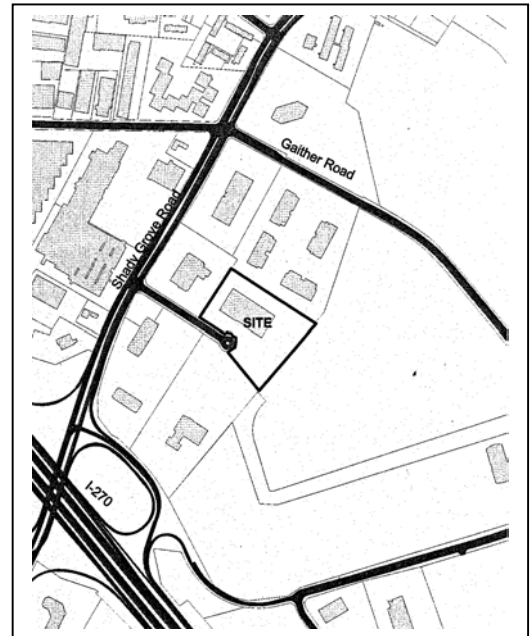
**SUBJECT:** Variance Application APP2002-00779

**Applicant:** TA/Western, LLC  
c/o McShea & Company  
One Bank Street, Suite 300  
Gaithersburg, MD 20878

**Owner:** TA/Western LLC

**Date Filed:** June 7, 2002

**Location:** 2 Choke Cherry Road



**REQUEST:**

The applicant requests a variance of 3,097 square feet (1.02%) from the required 30 percent green area requirement in the I-3 Zone in order to accommodate the City's desire to extend Choke Cherry Road through the subject property. Since it appears that the property may have been short on green area from the beginning, the proposed application will effectively regularize what has been a nonconforming use.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

- The applicant must submit an Affidavit of Posting certifying that the public hearing sign has been posted on the property in accordance with City requirements. A public works permit will not be issued until the sign is returned.

**ANALYSIS**

**Property Description**

The subject property consists of 304,484 square feet (6.99 acres) at the end of the Choke Cherry Road cul-de-sac. The site is improved with a 2-story office building containing 93,000 gross square feet of floor area and 386 associated parking spaces. There are two access points from Choke Cherry Road to the site. One point is at the west end of the site, the other coming off the end of the cul-de-sac. The site is a portion of the Danac Technology Park development. Similar office development adjoins the site to the north and west, as well as across Choke Cherry Road to the south. The lot at 1 Choke Cherry Road is currently vacant, but had been occupied by the Kodak film-processing laboratory. The area to the east is a part of the King Farm development. There will be some open space along the boundary with the King Farm, and office development just to the west.

## Project Proposal

The City of Rockville wishes to pursue the extension of Choke Cherry Road to Piccard Drive as quickly as possible. The office projects associated with the King Farm are coming on line, and it is desirable to increase the traffic circulation options available in this area. The Danac Technology Park is currently under application for major redevelopment under application PDP2001-00003 (Market Square at Shady Grove). However, consideration of the PDP is still months away, and any redevelopment would likely take several years to begin. An agreement in principal has been reached that provides for the property owners to grant the City an easement across a portion of the site to construct the road extension in a timely manner. At such time as the proposed PDP is approved and redevelopment gets under way, this extension of Choke Cherry Road will be dedicated as a public right-of-way and the green area will be brought up to the code requirement.

The applicant has indicated to staff that the financial instruments attached to the property require that the existing number of parking spaces on the site be retained. The existing 386 spaces come to 4.15 spaces per 1,000 square feet of floor area. The ordinance requires 310 spaces, or 3.3 per 1,000 square feet of floor area. The proposed extension of Choke Cherry Road will remove approximately 30 parking spaces, plus some of the existing green landscaped area. The current proposal anticipates utilizing the road extension for on-street parking as a way to make up some of the lost parking spaces. Since the road will be in an easement, the property will remain in the applicant's ownership, allowing for the on-street parking to be counted towards their total.

The applicant's engineer has determined that the green area on the site does not meet the code requirement now. This appears to have been an error in the approval of the original site plan back in 1967 when the development was originally approved, or in 1979 when an expansion of the building was approved. This means that the site may have been nonconforming for the past 35 years. According to the data submitted by the applicant, the site currently has a green area of 28.1%, which means it is 5,875 square feet below the required minimum. Under the current proposal, a portion of the cul-de-sac will eventually be abandoned, which will result in an increase of 1,982 square feet in the size of the lot to be added as green area.

At this time, however, the staff believes that the variance should be calculated based on the existing lot area, discounting the eventual right-of-way abandonment, since that might not occur until after completion of the road construction, or even later. Therefore, the variance should be calculated as follows:

Existing Lot Area	-	304,484 sq. ft.
Required Green Area (30%)	-	91,345 sq. ft.
Existing Green Area (28.1%)	-	<u>85,470 sq. ft.</u>
Green Area Deficit	-	5,875 sq. ft.

Green Area Provided Under Proposed Plan	-	88,248 sq. ft. – 28.98%
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Required Green Area less Proposed Green Area:  $91,345 - 88,248 = 3,097$  sq. ft., or 1.02 %.

An additional reason for the variance is required is that the code requires parking to be set back 50 feet from a public right-of-way. Choke Cherry Road will remain a public right-of-way up to the end of the existing cul-de-sac, so any parking in that area must retain the 50 foot setback. The proposed site plan accommodates as much parking as possible within these constraints, including the on-street spaces. Even so, the construction of the road extension still requires the variance for the green area requirement.

It is expected that once the roadway is built, a portion of the cul-de-sac right-of-way will be abandoned. This will have the effect of increasing the size of the lot, but also the amount of green area. If and when this occurs, the green area deficit will be reduced to 1,710 square feet, or 29.4%. However, since there is no timetable for the abandonment, the variance request is predicated on the current situation with the expected roadway construction.

### **Applicable Section of the Zoning Ordinance**

Section 25-1 of the Ordinance defines a variance as “a modification only of the density, bulk, or area requirements, where such modification will not be contrary to the public interest and, owing to the conditions unique to the property and not the result of any action taken by the applicant, a literal enforcement of the ordinance would result in practical difficulty.” Section 25-438(a) establishes the minimum green area requirement for the I-3 Zone at 30 percent of the lot area.

### **Staff Observations and Assessment**

After review and analysis of the application request, the following determination is offered:

- (1) **The variance as requested would not be contrary to the public interest.** Granting the variance would allow the City to build the extension of Choke Cherry Road and allow the applicant to maintain the property in a conforming status. The very minor reduction in green area of only 1.1% will have no adverse impact on the surrounding area, all of which is currently developed or proposed for development in uses similar to the existing use of the site. Since the site may actually have been below the green area requirement from the beginning, the request actually improves on the current situation. The granting of the easement for the road construction also allows the property to retain that area for calculation of FAR if and when the proposed redevelopment of the area occurs. At the time of redevelopment, the required green area will be met.
- (2) **The variance is requested owing to conditions peculiar to the property and not the result of any action taken by the applicant.** The condition peculiar to this property is that the extension of Choke Cherry Road must pass through the site in order to connect with Piccard Drive just across the property line. The extension is desired and is being proposed by the City, not by the applicant. The granting of the easement for the road extension is desired by the City in order to save time and expense over having to go through a formal acquisition process.
- (3) **A literal enforcement of the ordinance will result in practical difficulty.** If the Ordinance were enforced literally, the property owner would be left with a property in a nonconforming status, lacking the necessary minimum green area. This would have an adverse impact on future financing and/or leasing of the site.

Based on these factors, staff recommends approval of Variance Application APP2002-00779, subject to the condition listed on page one of this report.

**Notification**

Public hearing notices were sent to the 3 owners of the adjoining properties within 200 feet of the subject site. There are no civic associations in the vicinity of the property.

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Attachments